

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

KIANDRA DANIELLE SOUFFRANT, CASE NO.: 18-40550-KKS
Debtor. CHAPTER: 7

KIANDRA DANIELLE SOUFFRANT, ADV. NO.: 19-04041-KKS
Plaintiff,

v.

STATE OF FLORIDA DEPT. OF CHILDREN
AND FAMILIES BENEFIT RECOVERY/
OFFICE OF PUBLIC BENEFITS INTEGRITY
Defendant.

**ORDER 1) GRANTING SUMMARY JUDGMENT FOR DEFENDANT AS
TO NONDISCHARGEABILITY UNDER 11 U.S.C. § 523(a)(7); and
2) DISMISSING REMAINDER OF ADVERSARY PROCEEDING FOR
LACK OF SUBJECT MATTER JURISDICTION**

On January 21, 2021, the Court conducted a status hearing in this adversary proceeding. At the conclusion of that hearing the Court announced it would consider whether to grant summary judgment in favor of Defendant. After additional review of Plaintiff's Amended Complaint, the

Court determines that summary judgment in favor of Defendant on the issue of nondischargeability under 11 U.S.C. § 523(a)(7) is appropriate pursuant to Rule 56(f), Fed. R. Civ. P., applicable by Fed. R. Bankr. P. 7056; and that dismissal of the remainder of this action due to lack of subject matter jurisdiction is appropriate pursuant to Rule 12(h)(3), Fed. R. Civ. P., applicable to this adversary proceeding by Fed. R. Bankr. P. 7012(b).

BACKGROUND

Plaintiff filed a Chapter 7 bankruptcy petition on October 15, 2018.¹ She received a discharge on January 30, 2019.² On September 13, 2019, Plaintiff filed papers requesting that her bankruptcy case be re-opened to permit her to file an adversary proceeding.³ The Court construed the papers as a Motion to Reopen which it granted on September 26, 2019.⁴

Plaintiff, an individual who received benefits from Defendant, State of Florida Dept. of Children and Families Benefit Recovery/Office of Public

¹ *Voluntary Petition for Individuals Filing for Bankruptcy, In re Souffrant*, No. 18-40550-KKS (Bankr. N.D. Fla. Oct. 15, 2018), Doc. 1. Defendant was not listed on Plaintiff's list of creditors in her original or amended schedules. *Id.* at Docs. 18, 30, 37.

² *Order of Discharge, In re Souffrant*, No. 18-40550-KKS (Bankr. N.D. Fla. Jan. 30, 2019), Doc. 41. The Order of Discharge specifies the types of debts that are not discharged, including "debts for most fines, penalties, forfeitures, or criminal restitution obligations." *Id.*

³ *Pro Se Document, In re Souffrant*, No. 18-40550-KKS (Bankr. N.D. Fla. Sept. 13, 2019) Doc. 45.

⁴ *Motion to Reopen Chapter 7 Case, In re Souffrant*, No. 18-40550-KKS (Bankr. N.D. Fla. Sept. 13, 2019), Doc. 46; *Order Granting Relief Requested in Debtor's Pro Se Document (Doc. 45) and Reopening Case, In re Souffrant*, No. 18-40550-KKS (Bankr. N.D. Fla. Sept. 26, 2019), Doc. 47.

Benefits Integrity (“DCF”), filed a Complaint initiating this adversary proceeding on October 3, 2019.⁵ DCF filed an answer on November 8, 2019.⁶ Attached to DCF’s answer is a document entitled “*Pretrial Intervention Program Deferred Prosecution Agreement*,” (“Deferred Prosecution Agreement”) that Plaintiff signed on July 9, 2019, almost six months after receiving her bankruptcy discharge.⁷ The Deferred Prosecution Agreement states that Plaintiff will pay Defendant “restitution in the amount of 2,535 dollars,” in lieu of criminal prosecution.⁸

The Court scheduled and held a status hearing on March 3, 2020, at which neither party appeared.⁹ Subsequently, Plaintiff submitted a *Pro Se Document* alleging, among other things: “Dcf [*sic*] has caused Defamation . . . and I want them to be held liable for everything”¹⁰ The Court then entered an order to show cause why this adversary proceeding should not be dismissed for failure to comply with the scheduling deadlines contained in the Court’s *Initial Scheduling Order*.¹¹

⁵ Plaintiff’s initial Complaint comprised a document entitled “*Brief Complaint*,” Doc. 1.

⁶ *Answer*, Doc. 6-1.

⁷ *Id.* at p. 4.

⁸ *Id.*

⁹ Doc. 13.

¹⁰ Doc. 14, p. 1.

¹¹ *Order for Plaintiff to Show Cause why Adversary Proceeding Should not be Dismissed* (“OTSC”), Doc. 15.

Plaintiff submitted a response to the OTSC on April 14, 2020; DCF filed no response.¹² In her response, Plaintiff asserts “[DCF] . . . has caused me damages and losses;” attached to the response are copies of the Deferred Prosecution Agreement and various other documents.¹³

Still unsure of what relief Plaintiff might be seeking in this adversary proceeding, at a hearing on May 21, 2020 the Court directed Plaintiff to file an amended complaint if she wished to continue pursuit of this adversary proceeding.¹⁴ The Court then entered a *Supplemental Scheduling Order*, giving Plaintiff until June 11, 2020 to file an amended complaint clarifying the relief requested, and giving Defendant fourteen (14) days to respond.¹⁵ Plaintiff timely filed her Amended Complaint.

In the Amended Complaint, Plaintiff requests “relief of the unauthorized and wrongfully determined criminal case that was brought upon me for allegations of food stamp fraud;” an injunction “so that [DCF] won’t do this to another innocent parent;” and compensatory, punitive, and special damages.¹⁶ Plaintiff filed a document docketed as a “Supplement” on June

¹² Doc. 20.

¹³ *Id.* at p. 1.

¹⁴ Doc. 25.

¹⁵ Doc. 28.

¹⁶ *Amended Complaint*, Doc. 31, pp. 1, 3.

22, 2020 in which she alleges all kinds of improper behavior by DCF employees, that her debt to DCF is dischargeable, and that the criminal case against her commenced by DCF should, essentially, go away.¹⁷ In the Supplement, Plaintiff again requests an injunction against DCF and “approval” from this Court to sue DCF for “monetary damages . . . for violations of tort laws and third party negligence.”¹⁸

In its answer to the original Complaint, DCF alleges that Plaintiff owes it \$2,495.00 on account of restitution for public assistance fraud, which is nondischargeable under 11 U.S.C. § 523(a)(2)(A).¹⁹ Defendant DCF has never filed a response to the Amended Complaint, nor has it or its counsel of record ever appeared at a hearing.²⁰

DISCUSSION

Summary judgment is due to be granted in favor of DCF on the issue of nondischargeability.

Summary judgment is proper if “there is no genuine dispute as to any material fact and the movant is entitled to summary judgment as a matter of law.”²¹ A genuine issue exists “if the evidence is such that a reasonable

¹⁷ Doc. 33.

¹⁸ *Id.* at p.3.

¹⁹ Doc. 6-1.

²⁰ It appears that the attorney who filed the Answer to the original Complaint is no longer with DCF or employed by the State of Florida.

²¹ Fed. R. Civ. P. 56(a) made applicable by Fed. R. Bankr. P. 7056.

jury could return a verdict for the nonmoving party;”²² and a fact is material if it “might affect the outcome of the suit under governing law.”²³ “[T]he evidence and inferences drawn from the evidence are viewed in the light most favorable to the nonmoving party, and all reasonable doubts are resolved in his favor.”²⁴

The debt Plaintiff seeks relief from is what she agreed to pay pursuant to the Deferred Prosecution Agreement in order to avoid further criminal prosecution. Bankruptcy Code Section 523(a)(7) provides that a debtor is not discharged from a debt “to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual or pecuniary loss. . . .”²⁵ In *Kelly v. Robinson*, the United States Supreme Court held that restitution arising from state criminal conviction falls within this exception to dischargeability in Chapter 7 cases.²⁶ *Kelly v. Robinson* “is still the law of the land” in the Eleventh Circuit, which includes Florida.²⁷

²² *Yarbrough v. Morgan*, Case No.: 3:13cv613/MCR/EMT, 2016 WL 10650413 (N.D. Fla. Aug. 25, 2016) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

²³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

²⁴ *WSB-TV v. Lee*, 842 F.2d 1266, 1270 (11th Cir. 1988).

²⁵ 11 U.S.C. § 523(a)(7) (2020).

²⁶ *Kelly v. Robinson*, 479 U.S. 36 (1986).

²⁷ *In re Verola*, 446 F.3d 1206, 1209-10 (11th Cir. 2006).

Plaintiff concedes that the gravamen of this adversary proceeding is her desire to extricate herself from the debt she agreed to pay in lieu of incarceration or further prosecution.²⁸ In her Amended Complaint, Plaintiff states: “This criminal case that is still lingering after all this time is a burden that should have been handled by the department [DCF]”²⁹

After giving notice and a reasonable time to respond a federal court may “consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.”³⁰ The Eleventh Circuit Court of Appeals has emphasized that the notice requirement is “not an unimportant technicality, but a vital procedural safeguard,”³¹ and that “some minimum notice to the parties” is required before a court may grant summary judgment *sua sponte*.³² This Court gave Plaintiff notice at the hearing on January 21, 2021 of its intent to consider the Amended Complaint as though on summary judgment.³³ By this Order the Court provides

²⁸ Plaintiff also admits that the Deferred Prosecution Agreement carried with it other sanctions for the alleged public assistance fraud. Attached to Plaintiff’s response is a document signed by Plaintiff and dated July 9, 2019, entitled “*Disqualification Consent Agreement*,” that disqualified Plaintiff from receiving food stamps for a period of twelve (12) months as a condition of the Deferred Prosecution Agreement. Doc. 20, pp. 5-6.

²⁹ Doc. 31, p. 3.

³⁰ Fed. R. Civ. P. 56(f)(3), applicable by Fed. R. Bankr. P. 7056.

³¹ *Artistic Ent., Inc. v. City of Warner Robbins*, 331 F.3d 1196, 1201 (11th Cir. 2003) (quoting *Massey v. Congress Life Ins. Co.*, 116 F.3d 1414, 1417 (11th Cir. 1997)) (finding that district court’s order requiring further briefing was enough notice to grant summary judgment *sua sponte*).

³² *Karlson v. Red Door Homes, LLC*, 553 Fed. App’x 875, 877 (11th Cir. 2014).

³³ Doc. 40.

Plaintiff additional notice and an opportunity to object or file appropriate papers in opposition to summary judgment for DCF.

Because the debt Plaintiff seeks relief from is for criminal restitution, it is nondischargeable under 11 U.S.C. § 523(a)(7). Because there is no genuine issue as to any material fact on the issue of nondischargeability, it is appropriate to grant summary judgment in favor of DCF: the debt Plaintiff owes arising from the Deferred Prosecution Agreement was not discharged in her administrative bankruptcy case.

The remainder of this adversary proceeding is due to be dismissed for lack of subject matter jurisdiction.

This Court's subject matter jurisdiction is governed by 28 U.S.C. § 1334,³⁴ subsection (b) of which provides for "original but not exclusive jurisdiction of all *civil* proceedings arising under title 11, or arising in or related to cases under title 11."³⁵ Pursuant the Federal Rules of Civil Procedure, "If the court determines at any time that it lacks subject-matter jurisdiction, the court *must* dismiss the action."³⁶ A question of subject matter jurisdiction may be raised at any time, and, if necessary, should be raised

³⁴ 10 Collier on Bankruptcy ¶ 7012.12 (16th 2020).

³⁵ 28 U.S.C. § 1334(b) (2020) (emphasis added). On June 5, 2012, the United States District Court for the Northern District of Florida entered an administrative order pursuant to 28 U.S.C. § 157(a) referring to this Court "all cases under Title 11 (Bankruptcy) and all proceedings arising under Title 11 (Bankruptcy) or arising in or related to a case under Title 11 (Bankruptcy)" *Standing Order of Reference Regarding Title 11*, No. 4:95-mc-40111-DJ (N.D. Fla. June 5, 2012).

³⁶ Fed. R. Civ. P. 12(h)(3) (emphasis added), applicable by Fed. R. Bankr. P. 7012(b).

by a court on its own.³⁷

The State of Florida, on behalf of DCF, initiated a criminal case against Plaintiff in the Circuit Court for Leon County, Florida, on account of alleged public assistance fraud before she filed her Chapter 7 petition.³⁸ The bankruptcy automatic stay does not apply to “the commencement or continuation of a criminal action or proceeding against the debtor.”³⁹ For that reason, the State’s Attorney was not precluded from continuing to prosecute the criminal case against Plaintiff after she filed Chapter 7.

By this adversary proceeding, Plaintiff seeks relief from the criminal action: “[I] am asking for relief of the unauthorized and wrongfully determined criminal case that was brought upon me for allegations of food stamp fraud.”⁴⁰ Plaintiff also seeks relief from the debt she agreed to pay under the Deferred Prosecution Agreement.⁴¹

³⁷ *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) (citing *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)) (“challenge to a federal court’s subject-matter jurisdiction may be made at any stage of the proceedings, and the court should raise the question *sua sponte*”).

³⁸ As previously noted, Plaintiff filed her Chapter 7 Petition on October 15, 2018. The Court takes judicial notice that DCF commenced the criminal prosecution in April of 2018: *Affidavit of Complaint, Florida v. Souffrant, Kiandra Danielle*, No.: 2018 CF 001170 A001, (Fla. 2nd. Cir. Ct. Apr. 3, 2018) Doc. 8. *See*, Fed. R. Evid. 201; *Bryant v. Ford*, 967 F.3d 1272, 1275 (11th Cir. 2020) (quoting Fed. R. Evid. 201(b)) (“Rule 201 of the Federal Rules of Evidence permits a court to ‘judicially notice a fact that is not subject to reasonable dispute because it either ‘is generally known within the trial court’s territorial jurisdiction’ or ‘can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’”).

³⁹ 11 U.S.C. § 362(b)(1) (2020).

⁴⁰ Doc. 33, p.1.

⁴¹ Plaintiff alternately asserts that that the debt to DCF has been discharged and that she has repaid this debt: “I do not owe this debt I had already paid this debt back voluntarily,” *Id.*

The Court is not unsympathetic to Plaintiff's urging that the issues between her and DCF are aggravating. Similarly, the Court is mindful of Plaintiff's desire to put these issues behind her. But a bankruptcy court is not the proper forum for contesting events that occurred in a criminal proceeding.

For the reasons stated,

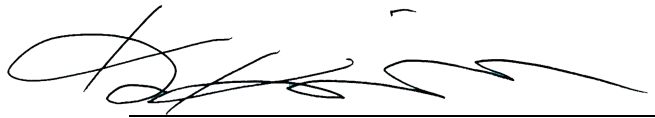
It is ORDERED:

1. Summary judgment is GRANTED in favor of DCF pursuant to Rule 56(f), Fed. R. Civ. P., applicable by Fed. R. Bankr. P. 7056. The debt arising from the Deferred Prosecution Agreement is non-dischargeable under 11 U.S.C. § 523(a)(7).
2. The remainder of this adversary proceeding is DISMISSED, pursuant to 28 U.S.C. § 1334(b) and Rule 12(h)(3), Fed. R. Civ. P., applicable by Fed. R. Bankr. P. 7012(b),
3. The continued status hearing, currently scheduled for March 11, 2021, is CANCELED.

at p. 1; "even though I knew I didn't owe anything, I just don't have the time to contest food stamp overpayments." *Id.* at p. 2.

4. The parties have until March 8, 2021 within which to file a request for relief from, or response in opposition to, this ruling, barring which this Order will become final.
5. Any request for relief from or response in opposition to this ruling may include affidavits, declarations, or other evidence in opposition to summary judgment. No party may rely on statements made in the original papers. A party that files a request for relief or response in opposition to this Order must show that there is an issue for trial based on a genuine dispute of the material facts.
6. This Order is without prejudice to Plaintiff, Kiandra Danielle Souffrant, to continue to contest the criminal charges and assessment of the amount due under the Deferred Prosecution Agreement in an appropriate state court or with DCF directly.

DONE and ORDERED on February 22, 2021.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: all interested parties, including
Kiandra Danielle Souffrant
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